

Sines v. Kessler 3:17CV72 11/25/19

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 CHARLOTTESVILLE DIVISION

4 ELIZABETH SINES, et al., CIVIL CASE NO.: 3:17-CV-72
Charlottesville, Virginia
5 November 25, 2019 12:59 p.m.
6 Plaintiffs, Show Cause Hearing

vs.

7 JASON KESSLER, et al., Before:
8 HONORABLE NORMAN K. MOON
UNITED STATES DISTRICT JUDGE
9 Defendants. WESTERN DISTRICT OF VIRGINIA

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1 (Proceedings commenced, 12:59 p.m.)

2 THE COURT: Good afternoon.

3 MS. PHILLIPS: Good afternoon, Your Honor.

4 THE COURT: Call the case, please.

5 THE CLERK: Yes, Your Honor. This is Civil Action
6 Number 3:17-CV-72, Elizabeth Sines and others versus Jason
7 Kessler and others.

8 THE COURT: Plaintiffs ready?

9 MS. PHILLIPS: We are, Your Honor.

10 THE COURT: Mr. Kline, are you ready?

11 MR. KLINE: We are, Your Honor.

12 THE COURT: All right. We're here on a contempt
13 hearing for defendant Elliott Kline to show cause why he
14 should not be adjudged in contempt of court by reason of the
15 facts certified by United States Magistrate Joel Hoppe in his
16 order dated October 30, 2019.

17 At the outset let me say, Mr. Kline, I'll give you
18 the opportunity to make any response you have to the facts
19 certified by Judge Hoppe about your noncompliance with
20 numerous court orders he issued, whether you should be held
21 in contempt and on the recommended sanctions Judge Hoppe
22 identified. You'll have that chance today before I make any
23 determinations.

24 I will note for the record that, though I provided
25 you the opportunity to respond to Judge Hoppe's order and

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1 issues raised therein by last Thursday, November 21, after
2 receiving your e-mail in the early morning hours on November
3 21, in which you indicated you could not attend today's
4 hearing, I provided you another date to submit any response
5 you would like me to consider before today's hearing. You
6 submitted an e-mail response on Friday, which I have reviewed
7 and considered.

8 I would also note that my chambers inquired with you
9 and plaintiffs' counsel what evidence or testimony you
10 intended to put on today. Plaintiffs' counsel responded, but
11 I received no response from you.

12 I have considered Judge Hoppe's thorough and
13 well-reasoned October 30 order and certification. I am not
14 bound by it, but the facts as certified were thoroughly
15 documented.

16 I have also independently reviewed the underlying
17 record, and that includes the numerous prior orders from
18 Judge Hoppe which brought us to this point.

19 And I have reviewed plaintiffs' response from
20 November 21, which this Court invited. The plaintiffs have
21 said they agree entirely with the facts certified by Judge
22 Hoppe. Indeed, they note that, if anything, Judge Hoppe
23 undercounted the number of violations of court orders by you,
24 Mr. Kline, because you also failed to answer the first
25 amended complaint, as required.

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1 At present there's been no direct challenge to any
2 of Judge Hoppe's facts or argument that they do not give rise
3 to civil contempt.

4 Your e-mail of November 22nd addressed a few issues
5 that touched on Judge Hoppe's certified facts; namely, one,
6 why you, Mr. Kline, have not sent your WalMart phone to the
7 discovery vendor; two, that you can't access your social
8 media accounts and so can't turn them over; and three, that
9 you have not, 22 months after plaintiffs served them,
10 received a copy of their discovery requests.

11 As I stated in my order of November 21, I am
12 considering whether Mr. Kline should be found in civil
13 contempt and what sanctions are appropriate, and not any
14 greater than necessary, in order to coerce him into
15 compliance with orders of Judge Hoppe and my own orders.

16 Mr. Kline, I understand at this point you do not
17 have counsel. Is that correct?

18 MR. KLINE: Correct, Your Honor.

19 THE COURT: Okay.

20 Okay. Directed to the plaintiffs: It is your
21 burden to establish by clear and convincing evidence the
22 existence of another party's civil contempt. And let's first
23 take up the issue of whether Mr. Kline should be found in
24 contempt. We'll address arguments about remedies later.

25 Do you wish to present any evidence?

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1 MS. PHILLIPS: I do, Your Honor, if I may.

2 THE COURT: Okay. Just a minute.

3 Let me ask you this: Has Mr. Kline taken any action
4 to comply, to your knowledge, since October 30 and this
5 Court's order of November 14?

6 MS. PHILLIPS: To my knowledge, he has not.

7 THE COURT: All right. Well, are you aware of any
8 steps or actions that Mr. Kline has taken to provide the
9 third-party discovery vendor the imaging and collection of
10 any electronic devices and social media credentials he had
11 identified on the certification form?

12 MS. PHILLIPS: I am aware that he has submitted a
13 single device to the e-discovery vendor. That was an iPhone
14 that he testified about at his deposition. My understanding
15 is he sent that in to the e-discovery vendor on August 14.

16 He also identified on his certification a PC that he
17 had during the operative time period. He has not sent that
18 in.

19 And as he indicated in his November 22 e-mail to
20 Your Honor, he also has a prepaid WalMart phone that he used
21 during the operative period that was not identified in his
22 certification, but that he did both testify to it having
23 responsive -- potentially responsive documentation, and also
24 again on his November 22 e-mail he indicated a willingness to
25 submit that to the e-discovery vendor as well. But to my

Kline - Examination by Ms. Phillips

1 knowledge, he has not submitted either of those two latter
2 devices to the vendor.

3 THE COURT: All right. You may proceed with the
4 evidence.

5 MS. PHILLIPS: Thank you. I'd actually like, if I
6 may, to call Mr. Kline to the stand.

7 THE COURT: All right. Mr. Kline, you can come
8 around and be sworn.

9 MS. PHILLIPS: Your Honor, may I approach with a
10 couple of binders, one for Your Honor and one for Mr. Kline?

11 THE COURT: You may.

12 ELLIOTT KLINE, CALLED BY THE PLAINTIFFS, SWORN

13 EXAMINATION

14 MS. PHILLIPS: I'm sorry, Your Honor. May I
15 approach?

16 THE COURT: You may.

17 MS. PHILLIPS: Thank you.

18 BY MS. PHILLIPS:

19 Q All right. Good afternoon, Mr. Kline.

20 A Good afternoon.

21 Q I'd like to start off with the representations that you
22 made to the Court on Friday, November 22, in your e-mail.

23 And I've given you a binder; and I'm going to be
24 referring to the tabs in the binder. So if you can turn to
25 tab one, please.

Kline - Examination by Ms. Phillips

1 Do you recognize this e-mail as the e-mail that you sent
2 on November 22 to plaintiffs' counsel and this Court?

3 A I do.

4 Q Okay. Great. I'll direct your attention to the second
5 point on the first page.

6 Do you see that?

7 A Yes.

8 Q And you told the Court, quote, "I asked the plaintiffs at
9 the deposition to please provide me with the form or list of
10 questions for the interrogatories they wish for me to answer,
11 but I have not received those, to my knowledge, via e-mail or
12 mail."

13 Do you see that?

14 A Yes.

15 Q You say, quote, "I am in no way trying to avoid answering
16 these questions, but I have not seen them."

17 Correct?

18 A Correct.

19 Q Okay. I'd like you to now to turn to tab two in the
20 binder. You were deposed in this case on August 7, 2019,
21 correct?

22 A Yes.

23 Q And you were under oath during that deposition, correct?

24 A Correct.

25 Q Okay. If you'd please turn to page -- well, first, does

Kline - Examination by Ms. Phillips

1 this look like a transcript of that deposition?

2 A It does, yes.

3 Q Please turn to page 415 of the deposition. And I'll
4 direct your attention, please, sir, to line eight.

5 THE COURT: You said 415?

6 MS. PHILLIPS: Correct, page 415. And, Judge,
7 you'll see that there are four pages on each single page of
8 the document, so you're looking for 415 in the upper
9 right-hand corner, towards the end of the deposition. It is
10 105 of the larger pages.

11 THE COURT: The last page I have is -- okay. I'm
12 with you.

13 MS. PHILLIPS: Okay. 415, page 415, at line eight.

14 BY MS. PHILLIPS:

15 Q Do you recall you were asked, question: "Separate from
16 imaging the cellphone, about the request for production and
17 the interrogatories, you intend to respond to those separate
18 documents, right?"

19 Do you remember being asked that question at your
20 deposition?

21 A Yes.

22 Q Do you recall when you answered, quote, "Yes, correct.
23 Yes"?

24 A I believe this is a reference to at the time we were
25 signing over a list of discovery things, like the cellphone

Kline - Examination by Ms. Phillips

1 and things like that. So I'm thinking here, because this is
2 so far in the deposition, this is what we were going over,
3 the form they handed me to sign, which were the lists of
4 cellphones, the e-mails, social media companies, things like
5 that. So I believe I was answering yes to that, not
6 realizing that they asked me if I had any interrogatories
7 there, which I did not, and I still have not received.

8 Q Well, let me read the next question. The question is --
9 the first question that I just repeated to you references
10 specifically the requests for production and interrogatories.
11 You answered, "Yes, correct. Yes."

12 The next question to you was: "You have those documents
13 now?"

14 Your answer was: "Correct."

15 Do you see that?

16 A Yes.

17 Q Okay. I'd like to go to tab three now, please. And you
18 might recognize this document as Exhibit 11 to your
19 deposition. This is a July 1st, 2019 e-mail to you from
20 plaintiffs' counsel Mike Bloch. Do you see that?

21 Michael Bloch. Excuse me.

22 Do you see that?

23 A Yes.

24 Q And I want to address your attention to the line that
25 says "Attachments" on this e-mail.

Kline - Examination by Ms. Phillips

1 Do you see that? It's on the first page of the e-mail,
2 sir.

3 A I see it.

4 Q And do you see that at the end, the very last two
5 documents listed are "Plaintiffs' First Set of
6 Interrogatories" and "Plaintiffs' First Set" -- "Corrected
7 First Set of Document Requests"?

8 Do you see that?

9 A Yes.

10 Q And this e-mail was sent to eli.f.mosley@gmail.com,
11 correct?

12 A Yes.

13 Q And you've confirmed multiple times in your deposition
14 that this e-mail, eli.f.mosley@gmail.com, is the correct
15 e-mail address for you, correct?

16 A Yes. However, since I turned in my -- the iPhone you
17 spoke of earlier, I have been almost unable to completely get
18 into that e-mail address. Because I haven't received the
19 phone back, I haven't been able to sign into that e-mail on
20 anything but the WalMart phone that I referenced previously
21 as well.

22 Q I understand. We'll get to that.

23 But you understand this e-mail was you sent to you --

24 A Yes.

25 Q -- on July 1st --

Kline - Examination by Ms. Phillips

1 A Yes.

2 Q -- 2019 --

3 A Yes.

4 Q -- correct?

5 And that was before you handed in --

6 A Yes.

7 Q -- your iPhone, correct?

8 A Yes.

9 Q So you received this e-mail?

10 A Yes.

11 Q Okay. And, again, it had attached to it the First Set of
12 Interrogatories and Plaintiffs' Corrected First Set of
13 Document Requests.

14 Do you see that?

15 A Yes.

16 Q I'd like you to turn to tab four now, please.

17 You attended a telephonic hearing with Judge Hoppe
18 presiding on August 8, 2019, the day after your deposition,
19 correct?

20 A Yes.

21 Q Great. I'd like to turn your attention to page 12 of
22 this transcript.

23 Let me ask you first: Does this appear to be a
24 transcript of that hearing?

25 A Yes.

Kline - Examination by Ms. Phillips

1 Q I'll direct your attention again to page 12, specifically
2 line 21. It begins with the Court says: "All right. Now,
3 Mr. Kline, how about the -- your responses to the
4 interrogatories and the requests for production of documents?
5 Are you working on those?"

6 Do you see where that question was asked of you by Judge
7 Hoppe?

8 A Yes.

9 Q Okay. Your response was: "Oh, sorry, my phone was
10 muted. Yes, that's one of the things I was given to look
11 through yesterday."

12 Do you see that?

13 A Yes.

14 Q Okay. We'll jump down on page 13 to line 14. The Court
15 says: "All right. Well, you know, I want you to start
16 working on those today, and I'll give you until next Friday
17 to -- you know, to get those responses."

18 Do you see that?

19 A Yes.

20 Q And your response to that was: "That's definitely
21 doable. That's definitely doable."

22 Do you see that?

23 A Yes.

24 Q And, again, this hearing occurred on August 8, correct?

25 A Yes.

Kline - Examination by Ms. Phillips

1 Q And the following Friday was August 16, correct?

2 A Yes.

3 Q But you did not submit to us the answers to the written
4 interrogatories or the document requests by August 16, did
5 you?

6 A No.

7 Q Okay. Okay. Let's turn back now to tab one, please,
8 again, your November 22 e-mail to this Court. In the first
9 paragraph, you noted that the WalMart phone was in a storage
10 lockup that you were unable to get access to until very
11 recently.

12 Do you see where you made that representation on the
13 22nd?

14 A Yes.

15 Q Turn back, please, now to your deposition. That's tab
16 two. And I'll direct your attention to page 99 of the
17 deposition.

18 MS. PHILLIPS: And, Your Honor, that is page 26, if
19 you're looking at the numerical numbers at the bottom of that
20 page -- or, excuse me, at the bottom of the deposition.

21 THE COURT: All right.

22 BY MS. PHILLIPS:

23 Q And on page 99 I'll direct your attention to line 8. The
24 question was asked of you: "That phone is somewhere in your
25 bags or boxes, correct?"

Kline - Examination by Ms. Phillips

1 Do you see that question was posed to you?

2 A Yes.

3 Q And your answer was: "Yeah, yeah. Like, I have a bunch
4 of moving boxes. It's just in one of my moving boxes."

5 Do you see that answer?

6 A Yes.

7 Q And the next question posed to you was: "Where are those
8 moving boxes?"

9 And you replied: "In a storage shed."

10 Do you see that?

11 A Yes.

12 Q And then you were asked the next question: "Where is
13 that storage shed?"

14 And you responded: "In Reading, where my family is
15 from."

16 Do you see that answer?

17 A Yes.

18 Q And then you were asked the question: "Do you have
19 access to that storage shed?"

20 And you responded: "Yeah, yeah."

21 A So this is where I thought the phone was.

22 Q Let me finish. Okay?

23 You responded: "Yeah, yeah."

24 A Yes.

25 Q Do you see that?

Kline - Examination by Ms. Phillips

1 A Uh-huh.

2 Q Okay.

3 A So this is where I thought the phone was and that's why I
4 had issues getting it. I thought this was in the storage
5 shed that my family has, but it was in a storage unit off our
6 property. I had to get access to that storage unit instead
7 of the one that was on the property, which is the shed I
8 thought my stuff was in.

9 Q And this is -- again, your deposition took place on
10 August 7 of 2019, correct?

11 A Correct.

12 Q When did you get access to this storage shed?

13 A I want to say three weeks ago, maybe two weeks ago. Very
14 recently.

15 Q Okay.

16 A It was around the time that I sent the first e-mail
17 response to you to -- from the eli.f.mosley account,
18 explaining, please send further e-mails to the
19 deplorabletruth e-mail; so it was the day after -- it was the
20 day before that that I got access to the storage unit.

21 Q Let's go ahead and jump ahead to that e-mail. Are you
22 referring to your October 18 e-mail? If you'd look at tab
23 six, please.

24 Do you recognize --

25 A Yes. Yes.

Kline - Examination by Ms. Phillips

1 Q Do you recognize this e-mail as an e-mail that you sent
2 to plaintiffs' counsel as well as Judge Hoppe's chambers?

3 A Correct.

4 Q Okay. And in it you refer to having access to -- excuse
5 me. You refer to not having access to your e-mail address
6 eli.f.mosley@gmail.com, correct?

7 A Correct.

8 Q Okay. And you indicate that you "finally have been able
9 to log in without Google's security authentication preventing
10 me from accessing the e-mail," correct?

11 A Correct.

12 Q Do you anywhere in this e-mail reference the WalMart
13 phone?

14 A No, I do not, but that's how I was able -- this e-mail is
15 sent from that phone.

16 Q If you had the WalMart phone as of October 18 of 2019,
17 why were you not able to get into contact with plaintiffs'
18 counsel before that nor access any of these documents,
19 according to you?

20 A I'm not sure I follow. I only got this phone the day
21 before this e-mail was sent. And when I got the phone,
22 that's when I was able to get into the eli.f.mosley account
23 so that I could get your e-mail so that I could respond.

24 Q Well, let me ask you this. So my understanding is that
25 now that you have the WalMart phone and your iPhone, you have

Kline - Examination by Ms. Phillips

1 complete access to your e-mail accounts. Correct?

2 A No, that is not correct, because the phone has to be
3 turned on. Minutes -- it's a track phone, so I have to
4 actually buy time to get into it, like, individually by the
5 minute. So it wasn't fully charged. Like, it didn't have
6 all the minutes on it to be able to get into the e-mail.

7 Q But you could add minutes, couldn't you?

8 A I could what?

9 Q You could have added minutes, couldn't you have?

10 A I didn't have any access to any minutes or anything like
11 that, no.

12 Q Could you have -- let me ask you this. According to this
13 e-mail you said you do have access to the
14 deplorabletruth@gmail.com on your iPhone, correct?

15 A Correct.

16 Q Now, you could have forwarded -- since you did have
17 access at this point, on October 18, access to your
18 eli.f.mosley@gmail.com e-mail, you did have access to court
19 documents that you could have forward to your deplorabletruth
20 e-mail, correct?

21 A Well, the issue was that I had about, like, five or six
22 minutes left on the phone, so that's when I sent this e-mail.
23 And the next day, when I went to go in to do something like
24 that, I actually went in to get something else not related to
25 the case from that e-mail address, and it immediately asked

Kline - Examination by Ms. Phillips

1 me to put more minutes on so I had service.

2 Q And did you do that?

3 A No, because I didn't have the ability to get any more
4 minutes on that. I didn't have any money to get the track
5 phone recharged or whatever. It was going to be, like, \$60
6 to get the minutes put on a dumb phone.

7 Q Okay. But, again, you could have paid money if you had
8 it to get access to --

9 A Well, this is why --

10 Q Sir? Sir?

11 A -- in this e-mail I asked, Please e-mail me a response
12 back to deplorabletruth.com. And also I gave you guys my new
13 phone number.

14 And I didn't receive an e-mail at that e-mail address
15 until I e-mailed you guys again on this phone number. And I
16 never received a call to update me. From this e-mail, I
17 never got anything back.

18 Q You never got anything back in response to this, but you
19 knew that you had discovery obligations that were
20 outstanding, correct?

21 A Correct.

22 Q And did you take any efforts or any steps -- did you make
23 any efforts or steps to come into compliance with any of
24 those discussions?

25 A Yeah, the e-mail here on tab six, where I explained to

Kline - Examination by Ms. Phillips

1 you guys that I don't have access to my eli.f.mosley account
2 consistently, and to please forward any of the remaining
3 discovery requests to deplorabletruth.

4 Q No, but, sir, that is an excuse for why you couldn't
5 participate in the litigation. I'm asking you whether or not
6 you took any affirmative steps to come into compliance with
7 the nine different discovery orders that you are out of
8 compliance with as of today.

9 A The reason I'm asking for the -- I'm asking for the
10 e-mails to be sent to deplorabletruth is that's how -- that's
11 the only e-mail address I had consistent access to, and still
12 only have consistent access to. And the issue was I had
13 still not received the phone that I sent to you guys on
14 August --

15 Q I understand. Let's talk about that. Go back to tab
16 one.

17 So you complained about -- in this e-mail about the
18 third-party vendor that still has your phone, your iPhone,
19 correct?

20 A Correct.

21 Q And you sent that iPhone in to the vendor on August 14,
22 2019, correct?

23 A Correct.

24 Q Okay. If you go to tab five, please, do you recognize
25 this as an e-mail exchange that you had with the eDiscovery

Kline - Examination by Ms. Phillips

1 vendor in this case?

2 A Yes.

3 Q If you go to the second page of tab five, your e-mail,
4 eli.f.mosley, sent to Barbara Bibas on August 14, 10-14, do
5 you see that?

6 A Yes.

7 Q Okay. And you say here, "I just wanted to let you know
8 that I sent out the phone this afternoon during lunch,"
9 correct?

10 A Yes.

11 Q Okay. And it says, "The PC I'm still working on and I'm
12 not even sure it will still turn on."

13 Do you see that?

14 A Yes.

15 Q Okay. I want to ask you about the first question. So
16 you had already sent in the phone to the eDiscovery vendor at
17 this point, correct?

18 A Correct.

19 Q Okay. And yet take a look at the e-mail address that
20 you're sending this from. This is eli.f.mosley@gmail.com;
21 the e-mail address you just represented to the Court that you
22 did not have access to once you got rid of your other phone
23 to the vendor?

24 A Correct. I was able to get into a family computer, and I
25 was able to get into the eli.f.mosley account still; but when

Kline - Examination by Ms. Phillips

1 I went back to try to get into it, it gave me the two-factor
2 authentication issue that we talked about earlier.

3 Q Uh-huh. Go back to the first page of tab five, please,
4 and I'll direct your attention to Ms. Bibas's response to
5 you, and in particular, the second paragraph. It reads:
6 "Also, would you please fill in the passwords for each of the
7 accounts listed in the below chart, as well as a pin, if any,
8 for the iPhone."

9 Do you see that?

10 A Correct.

11 Q Did you respond to this e-mail from Ms. Bibas?

12 A I believe I did. I just don't know if the response is in
13 here or not.

14 Q Okay. Well, you were required to bring evidence to
15 establish your alleged compliance with the discovery orders.

16 Do you have that e-mail with you today?

17 A No.

18 Q I'd like to ask you to take a look at tab nine, please,
19 sir. And I'm looking at the first page on tab nine. This is
20 a Thursday, September 5th, 2019 e-mail from Ken Kim to
21 Barbara Bibas.

22 Do you see that?

23 Or excuse me. To Barbara Bibas and
24 eli.f.mosley@gmail.com.

25 Do you see that?

Kline - Examination by Ms. Phillips

1 A Yes.

2 Q Okay. And it says: "Mr. Kline, we received a package
3 last week from a Bruce Kline containing a mobile device. Can
4 you please confirm that this is your device that you shipped
5 for collections? And, if so, can you please provide the
6 passcode and iTunes password as well?"

7 Do you see that?

8 A Yes.

9 Q Okay. So at least as of this date, September 5, the
10 eDiscovery vendor did not yet have the passcode to your
11 phone, correct?

12 A Yes.

13 Q And, in fact, you didn't actually provide that passcode
14 until October 18, correct?

15 A Yes.

16 Q Okay. So you turned in the phone on August 14th, but did
17 not turn in the passcode until October 18th?

18 A Yes.

19 Q Do you understand that?

20 A However, when we were ending the deposition in, I believe
21 it was August, I had said I was going to be changing the
22 password to all zeroes to make it an easy phone to get in.

23 Q Well, you've got your deposition transcript. Please go
24 ahead and find that testimony for me.

25 A It was at the end, I believe, after the meeting was done.

Kline - Examination by Ms. Phillips

1 Q You mean it was off the record?

2 A I believe so.

3 Q There's no record of your representation?

4 A I mean, I assume, because I was sending it in and I was
5 in contact with them, they had told me, please let us know if
6 you have any questions or issues, we were -- I was filling
7 out the last part of my signature on the forms for all the
8 required credentials and things like that, and as I signing
9 it in, I was filling in it, that's what I had said to them,
10 yes.

11 Q Okay. Do you understand that the passcode to your iPhone
12 was necessary so that the vendor could open and access your
13 iPhone?

14 A I didn't know that, no. That's why I made it all zeroes.
15 I assumed they would be able to get into it very easily.

16 Q Well, do you understand that, without knowing the
17 passcode, the vendor couldn't get into the iPhone?

18 A Right, but I didn't --

19 Q Do you understand that?

20 A I didn't know. So they sent this e-mail to me asking for
21 the password on September 5. This is when I did not have --
22 I was having trouble getting access to the eli.f.mosley
23 account. So I didn't know they were requesting this password
24 until my next response e-mail.

25 Q Well, go back to tab five, I believe, where again Barbara

Kline - Examination by Ms. Phillips

1 Bibas asked you for the passcode, for the pin to your iPhone,
2 if any, on August 14 of 2019.

3 A Correct. But what I'm saying is I didn't have -- if you
4 look through this, I had difficulties getting into that
5 e-mail to even respond to them to let me know. So I didn't
6 know that they didn't have the ability to get into the phone
7 until I eventually did respond -- I'm not sure which e-mail
8 it was -- telling them it was all zeroes.

9 Q Well, again, if you look at tab five, at the second
10 page -- and you've conceded here under oath that you did have
11 access on August 14 to the eli.f.mosley@gmail.com; you said
12 through some family computer or something.

13 We can move on. I'd like to ask you about your e-mail
14 passwords. Have you ever provided your e-mail passwords to
15 the eDiscovery vendor?

16 A No.

17 Q Do you understand that Judge Hoppe's orders -- under
18 Judge Hoppe's orders, social media credentials include e-mail
19 account passwords?

20 A I did not know that. I thought that the signature that I
21 signed over for Twitter and the various websites, that they
22 could access my accounts information, I thought that included
23 their ability to get into the accounts. I didn't know you
24 guys needed the passwords for the e-mails specifically.

25 Q Okay. Go ahead and look at tab eight, please. This is

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1 an August 19, 2019 e-mail from plaintiffs' counsel Yotam
2 Barkai to you.

3 Do you see that, Eli Mosley?

4 A Yes.

5 Q And I'll direct your attention to the second point, the
6 second paragraph down.

7 Do you see that?

8 A Number two?

9 Q Correct.

10 A Yes.

11 Q "When you fill out the form, list all of your e-mail
12 addresses and social media accounts that may contain relevant
13 documents, whether or not you've previously listed them, and
14 list the passwords for each e-mail address and social media
15 account." And then subparagraph (a) says, "The e-mail
16 addresses that you are required to list include, but may not
17 be limited to, eli.f.mosley@gmail.com and
18 deplorabletruth@gmail.com and eli.mosley@identityevropa.com."

19 Do you see that?

20 A Yes.

21 Q I'd like to talk to you about your social media accounts.
22 I understand that you indicated that you do not have access
23 to your social media accounts on Twitter, Facebook, or GAP,
24 or Discord.

25 Is that correct?

Kline - Examination by Ms. Phillips

1 A Correct.

2 Q Okay. And that's because those accounts were banned,
3 correct?

4 A Correct.

5 Q Okay. And I believe you've filled out now some consents
6 to give your permission for Twitter to disclose information
7 from those banned accounts?

8 A Correct.

9 Q Okay. I'd like you to look back at tab three, please.
10 This is Exhibit 11, again, to your deposition, the July 1st
11 e-mail from Michael Bloch to you.

12 A The front page or the back page?

13 Q I want you to start at the front page, and go all the way
14 down to the very last open bullet at the bottom of that page.

15 Do you see it?

16 A Yes.

17 Q It says, "Please complete the attached consent form.
18 Once the form is complete, please submit a request through
19 the privacy form at," and then it gives a web address.

20 Do you see that?

21 A Yes.

22 Q And then it explains, "In the section of the form
23 entitled, 'Please enter the specific information you are
24 requesting,' you must do two things."

25 And then if you turn the page, it explains what those two

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1 things are.

2 And you haven't completed the privacy form at this
3 website, <https://help.twitter.com/forms/privacy>, correct?

4 A Correct. I thought the form that I filled out at the
5 deposition was this essentially this form. It was a privacy
6 request. Was it not the same thing?

7 Q Well, what you received was consents, the consent form,
8 but this e-mail clearly instructs you that, in addition to
9 the consent form, you also have to submit the privacy form.

10 Do you see that?

11 A Right. But this is before the deposition.

12 Q Correct. But you received this e-mail, correct?

13 A Correct.

14 Q We established that?

15 A Yes.

16 Q Okay. Let's turn to tab seven, please. You appeared at
17 a July 2nd hearing before Judge Hoppe, correct?

18 A I don't see that.

19 Q Excuse me?

20 A Oh, I see that. Yeah, here it is. This is a phone call,
21 so I didn't appear; but I was on the phone, yes.

22 Q Right. Okay. Correct. And does this -- this appears to
23 be a transcript from that July 5th --

24 A Yes.

25 Q Excuse me, July 2nd hearing, correct?

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1 A Yes.

2 Q Great. I'd like you to turn to page 19 of that
3 transcript, line 22. And the Court says: "All right. I
4 think for any social media accounts, whether you yourself are
5 able to access those or not, you would need to identify all
6 of the social media accounts and then allow consents for
7 those to be -- you know, to be" --

8 And then you say: "Yeah, I'm totally fine with going
9 through that. The biggest issue, I would say, for Facebook
10 and Twitter would be both of those I used under, you know,
11 burner e-mails, I guess you would say, like, not real e-mail
12 addresses. So I don't know if there's a way of verifying who
13 I am or that I was the owner or anything like that, but I'm
14 more than happy to go through with that process to, you know,
15 talk to Twitter or Facebook, or whatever, and, you know,
16 prove that you guys are -- you know, that they can hand over
17 that information to the Court."

18 Do you see your response there?

19 A Yes.

20 Q But, again, you have not actually worked with Twitter to
21 get us access?

22 A Well, I filled out the consent form at the deposition in
23 August.

24 Q I understand that. But you did not, in fact, fill out
25 the privacy form. You've conceded that, correct?

Kline - Examination by Ms. Phillips

1 A Correct. I just thought that that -- you understand what
2 I'm saying? I thought that the form I filled out at the
3 deposition was that privacy form, or was the form I needed to
4 fill out to give Twitter's approval to give it to you guys
5 for discovery.

6 Q I'd like to ask you a couple more questions about your
7 family computer that you conceded you were able to access the
8 eli.f.mosley account on. You were able to access that on
9 your family computer despite Google's two-factor
10 authentication, correct?

11 A Only once or twice. Then it started kicking me out
12 again, yes.

13 Q Okay. And you sent e-mail from that account, correct?

14 A From the Eli, yes, yes.

15 Q Okay. And you received e-mail on that account, correct?

16 A Yes, once I had access to it on the family computer. I
17 was just trying to get into it any way I could, so I tried an
18 older computer that I had logged into that account a long
19 time ago, so it didn't kick me off right away.

20 Q How often did you access that account on your family
21 computer?

22 A Only the number of times I sent e-mails. So two or maybe
23 three times, where I'm explaining that I need to have e-mails
24 sent to the deplorabletruth one.

25 Q Okay. And who owns that computer?

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1 A My family; so my parents.

2 Q Okay. And where is it located?

3 A In their house in Reading.

4 Q In Reading?

5 A Yeah.

6 Q Did you use that particular computer, your family
7 computer, to discuss anything with regard to the planning of
8 Unite the Right?

9 A No.

10 Q Is the family computer connected to a printer?

11 A No.

12 Q Did you ever print out the interrogatories or the
13 requests for production that you received from us?

14 A No.

15 Q When you had access to the eli.f.mosley account on your
16 family computer, did you take any action to comply with Judge
17 Hoppe's orders that you were out of compliance with?

18 A Yes. My action was to e-mail them a new contact e-mail
19 to get it to me. And I sent you guys notice, but I switched
20 from the old iPhone right before I sent it in to a new
21 iPhone. And when I did that, I was able to log in to the
22 deplorabletruth e-mail address as well as the eli.f.mosley
23 address. And I was able to be on that phone for a brief time
24 with that eli.f.mosley address, and then it kicked me off
25 because I had a security warning, Google security alert. And

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1 I was still able to be on the deplorabletruth e-mail address
2 on that phone.

3 So I had asked -- so I could comply, I asked that
4 anything that had been pertaining to the case discovery be
5 sent to the deplorabletruth e-mail address, so I could comply
6 with the discovery.

7 Q Okay. You've received now the various discovery orders
8 that Judge Hoppe has issued, correct?

9 A Yes, I believe so.

10 Q Okay. Just to cover ground that we've already covered
11 again, you have not submitted any answers to the
12 interrogatories served on you, actually 22 months to the day,
13 January 25th, 2018; is that correct?

14 A Correct.

15 Q And you have not given any answers to our requests for
16 production, also served 22 months ago today, correct?

17 A I provided a phone, if that counts for that or if that's
18 part of that form or what --

19 Q But you haven't you actually answered any of the requests
20 for production, correct?

21 A Correct. Although, I'm not sure what the form is that I
22 filled out at the deposition. I filled out a form explaining
23 all my accounts and what they were, listing them out. And I
24 had to, like, sign it, like, 11 times or something crazy like
25 that. I'm not sure what that -- if that was another one of

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1 the production forms or not, but I did fill that one out as
2 well.

3 Q The Twitter consents?

4 A Yes.

5 Q And we've already established that you've not submitted
6 your e-mail passwords to the plaintiffs or to the vendor,
7 correct?

8 A Correct.

9 Q And you have not submitted the privacy form to Twitter,
10 correct?

11 A Correct.

12 Q Okay. And you've not submitted your WalMart -- prepaid
13 WalMart phone to the vendor, correct?

14 A Correct.

15 Q And my understanding is you listed as certification -- on
16 your certification the PC that you own, correct?

17 A Yes.

18 Q Okay. But you have not yet submitted that computer to
19 the vendor?

20 A That computer -- so that was a computer, I explained --
21 it's in the deposition somewhere. I'd have to go through and
22 look. But I explained that I didn't know where that computer
23 was or if I even had it still. That was a computer that I
24 had no communications about Unite the Right on. That
25 computer was very old. It was from when I was in the Army.

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1 And when I had moved to North Carolina for some time, I had
2 done that moving, we had dropped the computer, and it
3 basically fell apart. This is well before Unite the Right
4 was planned, number one or two, or anything like that.

5 So when I went and looked in the storage shed at my
6 parents', as well as the storage unit off their property, I
7 looked to see if it was in any of those, even in a broken
8 state. And it wasn't in any of those. So I assumed when we
9 made that move that we had to throw it out, because it was
10 utterly destroyed.

11 But I did mention it in the deposition because they had
12 asked me if there was anything. I just wanted to be very
13 honest with all the technology I used even before Unite the
14 Right, and things like that. But there was no communication
15 about Unite the Right or anything like that on that computer.
16 All that communication was done, as I said in the deposition
17 a lot, on my phone that I already handed over to the Court.

18 Q Okay. You posted on the social media platform Discord
19 during 2017, correct?

20 A Yes.

21 Q And, in fact, your posts on Discord in 2017 indicated
22 that you had an operative computer at that time, correct?

23 A I believe that that was brought up during the deposition.
24 I'd have to look over it again to see what the reference was,
25 but I believe what I was referencing was not that I had an

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1 actual PC, but I was using somebody else's for something
2 else. But I don't remember.

3 Q Go ahead and look at it. Why don't you turn to tab ten,
4 please.

5 You confirmed at your deposition that one of your Discord
6 handles was Eli Mosley hashtag 5269, correct?

7 A Correct.

8 Q Okay. Do you see at the very top there, it's a post
9 dated March 31, 2017, 6:37 p.m.?

10 Do you see that?

11 A Correct.

12 Q And you say, quote: "You should get a separate phone for
13 Alt-Right stuff, then arm with a kill password to go off
14 between noon and 1 p.m. each day. I activate it before I go
15 out and do things."

16 Do you see that post?

17 A Correct.

18 Q Okay. And then a minute later, 6:38, a few lines down,
19 Eli Mosley 5269 on the same date, you say: "So if I don't
20 put in the password between noon and 1 p.m. while I'm out
21 trolling Jews, it will erase the phone."

22 Do you see that?

23 A Yes.

24 Q Okay. And then if you'd turn the page, please. And
25 again at the same time, 6:38 p.m., second down line, Eli

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1 Mosley posts, quote: "Well, it's not a huge deal because the
2 phone is backed up on my PC."

3 A Correct.

4 Q So you were referencing to your having a PC in March of
5 2017?

6 A Yes, but --

7 Q Okay. I'd like to talk with you about your preservation
8 of your documents. Your previous counsel in this case was
9 Mr. James Kolenich, correct?

10 A Yes.

11 Q Okay. And Mr. Kolenich told you, while he still
12 represented you, about your discovery obligations, correct?

13 A Yes.

14 Q Okay. But you didn't, in fact, preserve all of your
15 documents and communications, did you?

16 A I didn't.

17 Q Okay. You testified in your deposition that you had an
18 Identity Evropa e-mail address in 2017, correct?

19 A Correct.

20 Q And that is eli.mosley@identityevropa.com, correct?

21 A Yes.

22 Q And you conceded at your deposition that you used that
23 e-mail address to communicate with defendants about Unite the
24 Right?

25 A Not defendants, but the press mostly, yes.

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1 Q But about Unite the Right?

2 A Correct.

3 Q And you also used that to send documents that you had
4 created on Google Docs on your phone to Discord, correct?

5 A Correct.

6 Q Okay. But you don't have access to that e-mail account
7 anymore, do you, the Identity Evropa e-mail address?

8 A No. When I stopped being a member of Identity Evropa,
9 the leadership there, which was the -- likely Nathan Damigo,
10 had pulled my e-mail address access from me. So they had an
11 administrator account for the Identity Evropa domain, I
12 guess, and when they -- when we parted ways, they completely
13 pulled my access.

14 Q Okay.

15 A So I wasn't able to get into at all or anything like
16 that, so I have no way of --

17 Q And that was in either -- I believe you testified in your
18 deposition, in either March or May of 2018, correct?

19 A Correct. About that time, yes.

20 Q And that was after this lawsuit was filed in 2017,
21 correct?

22 A Yes.

23 Q Okay. And you didn't save those Identity Evropa e-mails
24 anywhere, did you?

25 A Not outside of the e-mail address, the e-mail itself, no,

Kline - Examination by Ms. Phillips

1 because I wasn't anticipating that I'd be removed from access
2 to it.

3 Q You didn't take screenshots of those e-mails, correct?

4 A No.

5 Q You didn't back them up on an external drive, did you?

6 A No.

7 Q And you didn't back them up to the cloud, did you?

8 A Yes.

9 Q Okay. And you sent private Discord messages to some of
10 the defendants in this case, correct?

11 A Yes.

12 Q Okay. You sent private Discord messages to Mr. Kessler,
13 correct?

14 A Yes.

15 Q You sent private Discord messages to Mr. Robert Ray?

16 A Is that --

17 Q Azzmador.

18 A Azzmador, yes.

19 Q You sent private Discord messages to Nathan Damigo?

20 A Yes.

21 Q You sent private Discord messages to Invictus Soul?

22 A I don't believe so. Perhaps.

23 Q We can take a look at your deposition where you testified
24 you did.

25 A Okay.

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1 Q If you'd take a look at page 156 of your deposition.

2 But you don't have access to Discord today, correct?

3 A Correct.

4 Q You don't have access to those private messages that you
5 sent?

6 A No, I do not.

7 Q Okay. And, again, that's because you were banned from
8 Discord?

9 A Correct.

10 Q Okay. And you didn't take screenshots of those Discord
11 messages, did you?

12 A No.

13 Q Or save them in any way?

14 A No.

15 Q Okay. Mr. Kline, when was the last time you were
16 employed on a full-time basis?

17 A Before Unite the Right. A very long time ago.

18 Q 2016?

19 A Yes.

20 Q Okay. And so you are not employed currently on a
21 full-time basis?

22 A Not on a full-time basis, no.

23 Q And do you live with your parents in Reading,
24 Pennsylvania?

25 A Sometimes. I know I travel a lot to go do, like, odd

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1 jobs for people. People post things like odd jobs to do.
2 That's kind of what I'm doing to make money. So sometimes
3 I'll spend, like, two weeks at a time there, and then I'll
4 spend a month, two months away.

5 THE COURT: What do you do to make -- the odd jobs,
6 what do you do to earn money?

7 THE WITNESS: Like, help people put together, like,
8 sheds and things like that. Like, manual labor, manual
9 stuff. Help people, like, fenceposts on their farms, things
10 like that, just in my general area, or all the way up, like,
11 to the New York area, where the rest of my family is from.

12 THE COURT: Okay.

13 BY MS. PHILLIPS:

14 Q Mr. Kline, when Google supposedly kicked you out of your
15 eli.f.mosley account, the one that you have testified that
16 you were able to access through a family computer, do you
17 have any documentary evidence to support that happening? Did
18 you take a screenshot, for example?

19 A No, I didn't take any screenshots of e-mails or anything
20 like that. But every time -- like I said, every time I -- so
21 whenever I was logging into the eli.f.mosley address from the
22 family computer, and then the other time on the WalMart
23 account, I was able to get in, and then when I -- when the
24 screen goes dark or when I go away for a second and I come
25 back in, it boots me out and it asks for, like, the

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1 authentication code sent to the text message, which would go
2 to the phone number from my old account, or my old phone that
3 the eDiscovery still has.

4 Q You know that you can turn off two-factor authentication,
5 correct?

6 A I'm not sure how you could turn it off without having
7 access to the original e-mail address.

8 Q But you just testified that you had access to the
9 original e-mail address at least three separate times on the
10 family computer and on the WalMart phone.

11 A What I mean is so the -- maybe I would be able to turn
12 off the two-factor authentication. I'm not sure how to do
13 that, how to go in and do anything like that.

14 However, what I know is that when I went into the
15 settings, security settings, to see if I could stop it from
16 kicking me out every time I went away, it asks for a code
17 again. And that code doesn't go -- that code wasn't going to
18 the deplorabletruth e-mail address, which is what I thought
19 it should be doing, but it was not going to that e-mail
20 address, which would have made it really easy for me to be
21 able to get back in.

22 It could be -- I don't remember that I did this or not,
23 but it could be that when I'm in the eli.f.mosley account
24 that I had the Identity Evropa e-mail address as the primary
25 e-mail.

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1 Q Okay. I think you just referenced every time you've
2 gotten in to access your eli.f.mosley gmail account since
3 August 14.

4 How many times have you been able to access that account
5 since August 14?

6 A I'm unsure. I sent an e-mail each time, though.

7 Q Okay. And it just so happens that you sent e-mails on
8 the dates where you had pending court obligations? It just
9 so happened that you happened to get e-mail access to the
10 eli.f.mosley gmail account on dates, for example, where on
11 October 18 Judge Hoppe held a conference call with all the
12 parties to the case?

13 A On both those accounts -- on all those accounts I've had
14 other people, other defendants -- I believe one of the times
15 it was Chris Campbell maybe. Well, other defendants had
16 gotten in touch with me and said, "Hey, you need to be here."
17 Like, I didn't know previously about it. They got in touch
18 with me on my phone, on my new phone, to get in touch with
19 the Court for whatever was happening.

20 Q So you've been in contact with a lot of other
21 defendants --

22 A Only --

23 Q -- subsequent to turning in your original iPhone to the
24 eDiscovery vendor; is that what you're saying?

25 A Yes, only insofar as, "Hey, you have this specific

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1 obligation; I don't know if you know about it or not, but you
2 need to be here at this time, or you need to get something
3 done at this time."

4 Q Your new iPhone has a different phone number, correct?

5 A Correct.

6 Q How did they get your new phone number?

7 A I actually have no idea. I think it's because when I
8 sent the e-mail to you guys saying I have a new phone number,
9 I had -- somehow they had gotten it. Because originally the
10 intention of that phone number was that I would not get phone
11 calls from people on the Alt-Right, because I haven't been a
12 part of that group for two years now; that they wouldn't have
13 my phone number.

14 However, after I e-mailed the Court and the plaintiffs my
15 new phone number, shortly after, like, you know, two or three
16 days later, I believe it was, I was getting phone calls or
17 text messages from people, members of the Alt-Right, again.
18 And there's no way they would have had the phone number other
19 than that.

20 Q Sounds very convenient.

21 We would like you to produce those communications, so we
22 are going to need you to turn in your new iPhone as well to
23 the discovery vendor so that we can see those documents.

24 A That's fine, but I need to have some form of
25 communication. I mean, most of why we're here today, I

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1 believe, is because I'm having issues with communication
2 because of me not having my phone as the primary access to my
3 e-mail address. So do you guys know or do we know what is
4 going on with imaging? Because when I spoke to Mr. Bloch
5 here during deposition, it seemed like it was going to be a
6 relatively quick imaging process. And that happened in
7 August. It's now November. I still haven't received the
8 phone.

9 I understand that they didn't have that password that
10 they needed until October. However, they still said in the
11 deposition it should take no more than a week or two.

12 Q Assuming you gave them your passcode. But, again, we've
13 established that you didn't give them your passcode.

14 A On October 21st. It's now well past October 21st.

15 Q Understood. And you've received repeated communications
16 from plaintiffs' counsel about also giving access to your
17 e-mail address -- excuse me, your e-mail passwords, so that
18 the vendor can actually get access to the documentation that
19 you allegedly have on your phone.

20 Do you understand that?

21 A Yes.

22 MS. PHILLIPS: Okay. I have nothing further, Your
23 Honor.

24 THE COURT: All right. You may step down -- wait
25 just a minute.

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1 You sent the Court information, e-mail, that you
2 would not likely be here because you could not afford to get
3 here. How did you get here?

4 THE WITNESS: I had a family member drive halfway.
5 Then my father picked me up the other half of the way and
6 drove me the rest of the way. It was a very, very long trip.

7 THE COURT: Okay.

8 THE WITNESS: And we worked that out on Sunday.

9 THE COURT: Okay. Someone said you were flying in.
10 You didn't fly in?

11 THE WITNESS: No.

12 THE COURT: Okay.

13 THE WITNESS: We drove. It was a ten- or 11-hour
14 drive.

15 THE COURT: Okay. You may step down -- well, remain
16 there just a minute.

17 Are you going to have any other evidence?

18 MS. PHILLIPS: No, Your Honor. I would like the
19 opportunity to sort of sum up what we've heard, if I'm
20 permitted to.

21 THE COURT: Okay.

22 MS. PHILLIPS: But otherwise, no other evidence.

23 THE COURT: All right. While you're on the stand,
24 if you have anything you wish to say concerning this issue --

25 THE WITNESS: Yeah. Yes, Your Honor. I would say

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1 that, essentially, I've been trying to comply with the
2 discovery since the deposition I gave in August. I've been
3 trying to comply entirely with discovery. However, not
4 having my primary phone that I sent them in has been an
5 issue.

6 I understand there's been issues with they still
7 have the phone because they don't have the e-mail passwords.
8 I was not aware of that until just now. And that's the
9 reason they --

10 THE COURT: Was it 22 months ago you were to --

11 THE WITNESS: Well, they were sent to my family's
12 house; and at the time, I wasn't living there. So when I
13 got -- when I came back to my parents' house, they had a
14 stack of stuff from the Court. And I went through as much of
15 it as I could, but, you know, I'm representing myself right
16 now, so it's kind of hard.

17 THE COURT: But when you had attorneys, the
18 attorneys apparently indicated you wouldn't cooperate with
19 them.

20 THE WITNESS: The communication issues I had with
21 the attorneys were similar to these ones, where they would
22 call me the day before something was due, and I would be
23 working or doing something else, because at the time I was
24 working a third-shift job, so they were calling me on --

25 THE COURT: Where was that third-shift job?

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1 THE WITNESS: It was upstate in New York.

2 THE COURT: What was the name of the employer?

3 THE WITNESS: Excuse me?

4 THE COURT: Who was the employer?

5 THE WITNESS: It was -- it's not like contract work
6 or anything like that. It's people on Craigslist asking to
7 come help; hey, can you come help to do this or that or
8 anything like that.

9 THE COURT: They had three shifts, and you were on
10 the third shift?

11 THE WITNESS: It was a security-type job, so we were
12 just watching animals late at night.

13 But the overall -- the overall issues I've had with
14 the communication throughout this whole thing, I think,
15 can -- I can easily fix today. I have the WalMart phone with
16 me. I have my primary phone with me. I would prefer to have
17 at least one of my cellphones until the other one can be
18 imaged so I can at least have one thing to use.

19 But the first interrogatories that they asked me to
20 fill out, I'd be more than happy to do that. I searched
21 everywhere in my e-mails, eli.f.mosley and
22 deplorabletruth@gmail.com, looking for that attachment. I
23 see it in here, in their documents that they gave us, or they
24 gave me, but I wasn't able to find it when I went through. I
25 think there's so many e-mails that necessarily don't pertain

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1 to me or that I'm getting cc'd on that I wasn't able to
2 find --

3 THE COURT: Why didn't you cooperate with your
4 lawyers?

5 THE WITNESS: There wasn't any reason that I didn't
6 cooperate with the lawyers. The lawyers would contact me and
7 ask me for information. I would send it to them or give it
8 to them, and then they would complain that I hadn't given the
9 right information or something like that. So I think there
10 was miscommunication on what they needed from me. And they
11 just -- I guess they were done with it. They didn't want to
12 deal with it.

13 I am looking at right now -- I think I said on my
14 last e-mail to the Court and to the plaintiffs that I'm
15 trying to find new counsel to represent me. But that's been
16 kind of an issue as far as looking for someone that's willing
17 to take the case, as well as being able to afford the
18 retainer, things like that, because I have no -- I mean, I'm
19 representing myself. I'm unsure exactly what my obligations
20 have been other than what we've talked about here today.

21 THE COURT: You don't know what your obligations
22 were? How many orders did Judge Hoppe send you?

23 THE WITNESS: I mean, I knew I had to turn in my
24 cellphone, and then I believe -- and then when I turned in my
25 cellphone --

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1 THE COURT: What part of the orders did you not
2 understand? They were written in English, weren't they?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: It's simple language. There wasn't
5 anything complicated about it, was there?

6 THE WITNESS: No, Your Honor, it wasn't complicated.
7 The issues came down to when they were referencing certain
8 forms. So one thing that came up in the deposition was I
9 believed that I filled out the privacy form for Twitter, but
10 what I actually filled out was a consent form for Twitter. I
11 didn't realize those two documents were different.

12 THE COURT: Do you have some sort of disability --

13 THE WITNESS: No, Your Honor.

14 THE COURT: -- that prevents from understanding?

15 THE WITNESS: Other than ADHD, no, Your Honor.

16 THE COURT: Other than what?

17 THE WITNESS: ADHD.

18 THE COURT: That doesn't affect your memory.

19 THE WITNESS: No, but like I said, the issue is
20 really, like, I would get an e-mail saying, "Here's the" --
21 something like, "Here's the certification for Twitter to
22 access your accounts."

23 I filled it out in the deposition, I gave it back to
24 them, so I thought I was done with that.

25 And then today I learned that I needed to actually

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1 fill out another privacy form online.

2 THE COURT: You just found out today?

3 THE WITNESS: Excuse me?

4 THE COURT: Wasn't that in the information that was
5 read to you?

6 THE WITNESS: That's what I said; I just found this
7 out today.

8 THE COURT: No, I think it was given to you -- the
9 information was given -- what she was reading was what was
10 before you months ago.

11 THE WITNESS: That form that she had read was from
12 before the deposition. So I thought that I -- coming here
13 today, I thought that my obligation to Twitter was complete.
14 The only things that I thought that I had still had to do was
15 hand over the WalMart phone, explain what happened with the
16 PC issue; and then as far as the e-mails go, I thought that
17 the Twitter certification also counted for Google. I did not
18 know -- I didn't necessarily understand that they also need
19 my e-mail address passwords to get into the phone. So I'm
20 able to give all three.

21 THE COURT: You know that what you're saying just
22 doesn't make any sense, don't you?

23 THE WITNESS: It makes sense, Your Honor.

24 THE COURT: I mean, it's just contemptuous to even
25 sit and tell the stories like you're telling and expect

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1 somebody to believe it.

2 THE WITNESS: Your Honor, I'm telling the truth. I
3 honestly did not know that they didn't have what they needed
4 to fulfill the obligations.

5 THE COURT: Okay.

6 THE WITNESS: They said they wanted the e-mail
7 addresses. I wasn't aware that they hadn't had access. Like
8 I said, they gave me a form to give -- to tell Google and
9 Twitter and Facebook, yes, you can have access to the
10 accounts. I filled that form out, not realizing that they
11 still needed my information for that.

12 THE COURT: You're not unfamiliar with computers,
13 are you?

14 THE WITNESS: Not really, no.

15 THE COURT: I'm not so adept with them myself, but I
16 thought your position in this organization or whatever was
17 that you dealt with computers.

18 THE WITNESS: I dealt with communication and, like,
19 networking, not necessarily computers.

20 THE COURT: Well, I mean, you knew how to use the
21 computer.

22 THE WITNESS: I used mostly the phone, Your Honor,
23 not a computer.

24 But to the point that you're saying, the issue isn't
25 a computer issue. It's that I had filled out a form at the

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1 deposition giving Facebook, Twitter, and Google the ability
2 to go in and give the discovery team my information. And I
3 believed that was done. And then today I just learned that,
4 no, you have to actually provide your password as well.

5 I'm totally able to provide my passwords to them for
6 that. I did not know. I thought that --

7 THE COURT: You know what passwords are for, right?

8 THE WITNESS: Excuse me, Your Honor?

9 THE COURT: You don't know what passwords are for?

10 THE WITNESS: I do, but I thought that the companies
11 would give it to them regardless of having the passwords or
12 not. I did not know they needed that. I didn't realize
13 Google needed my password to get into my Google account. I
14 thought that Google could get into any account they wanted.

15 THE COURT: Well, Google wasn't under the Court
16 order, was it? You were.

17 THE WITNESS: Correct, Your Honor. However, they've
18 asked me for --

19 THE COURT: So you told -- you were effectively
20 telling the plaintiffs: Go find out somewhere else.

21 THE WITNESS: Well, no. The form I filled out, I
22 believed or I thought that it was a message to Google saying:
23 "Send us this information."

24 THE COURT: Well, didn't it tell you to give the
25 passwords?

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1 THE WITNESS: They told me -- I realize that now in
2 the document I saw today, but I did not realize that before,
3 no, Your Honor.

4 THE COURT: What do you mean you didn't realize it?
5 It was in the instructions, was it not?

6 THE WITNESS: Those instructions that were read out
7 was before the deposition.

8 THE COURT: Okay. To finish up, any other
9 justification you have for not complying with the orders?

10 THE WITNESS: Excuse me, Your Honor?

11 THE COURT: Just any other justification you might
12 have for not complying with the orders? I want to give you a
13 full opportunity to explain.

14 THE WITNESS: The main issue is not having my phone
15 still in the discovery. So the fact -- like, the fact that I
16 don't have access to the primary e-mail address where
17 communication has been, which is the eli.f.mosley account,
18 has made it very difficult to communicate with the Court and
19 everything else.

20 Now, I started getting e-mails to the
21 deplorabletruth e-mail address, which I currently do have
22 access to, and that's made it very easy for me to communicate
23 because I've been able to send two or three e-mails in the
24 past few days. But before that, I wasn't getting any e-mails
25 to the deplorabletruth e-mail address, which I believe it's

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1 on one of these -- I'm sorry, one of these tabs I e-mailed
2 them and asked them, Can you please send -- yes, on number
3 six, I -- on October 18 I asked, Please send all further
4 e-mails to the deplorabletruth e-mail address.

5 I never got any e-mail addressed to that e-mail
6 address until this last week.

7 So I asked the plaintiffs, as well as the Court, to
8 please forward all e-mails pertaining to this case to that
9 e-mail address. That's the e-mail address that I had. And I
10 did not receive an e-mail to that e-mail address until this
11 past week, when we started -- when I got back into the e-mail
12 account.

13 So that's the main issue, was communication, I would
14 say.

15 THE COURT: So the fault is not with you but with
16 the plaintiffs and other people?

17 THE WITNESS: Well, the fault is that I don't have
18 access to the e-mail address that was the primary
19 communication that you guys were -- the Court, as well as the
20 plaintiffs, were sending e-mails to an e-mail address that I
21 didn't have access to.

22 THE COURT: You couldn't answer any of the
23 questions?

24 THE WITNESS: Excuse me, Your Honor?

25 THE COURT: You could not answer any of the

Kline - Examination by Ms. Dunn

1 discovery without --

2 THE WITNESS: Well, I wasn't getting any e-mails at
3 all.

4 THE COURT: Okay. All right.

5 Does the plaintiff wish to ask him any follow-up
6 questions? Anything else you wish to ask him?

7 MS. PHILLIPS: To ask him anything else? My
8 co-counsel would like to.

9 MS. DUNN: We have one question. Karen Dunn for
10 plaintiffs.

11 EXAMINATION

12 BY MS. DUNN:

13 Q Mr. Kline, I just want to ask you about something that
14 you said to Judge Moon. He asked you whether, when you
15 planned the Unite the Right, you were using computers. And
16 it sounded a lot like you told him no, and you said that you
17 were using communications.

18 What do you mean by that?

19 A Most of the communication that went out to Unite the
20 Right was done using the phone I've already sent in.

21 Q Okay. So the --

22 A 99 percent of it, maybe even a hundred percent.

23 Q Okay. So the distinction you're making is between using
24 a phone and not using a desktop?

25 A Correct. He had asked me if I knew computers, like, if I

Kline - Examination by Ms. Dunn

1 was computer savvy. He believed that was my kind of skill
2 set, and I corrected him that, no, I'm not a computer guy, I
3 used primarily cellphones with Unite the Right.

4 Q Okay. So when he says to you, Are you -- when the judge
5 asked you a question, which is essentially, Are you computer
6 savvy, your response is, Actually, I planned the rally using
7 a phone.

8 Is that fair?

9 A Yes.

10 Q Okay. And were you savvy with your phone?

11 A Relatively speaking, yes.

12 Q And were you savvy with Discord?

13 A Yes.

14 Q And were you savvy with chats?

15 A With?

16 Q Chats, private chats?

17 A Sort of, yeah.

18 Q How about sending e-mail; savvy with that?

19 A I didn't use e-mail at all. In the deposition I said
20 that multiple times, that we didn't really e-mail anything in
21 Unite the Right. There's really no e-mails.

22 Q Okay. But are you savvy with e-mail? That's my
23 question.

24 A No.

25 Q Okay. Savvy with texts? Are you savvy with texts?

Kline - Examination by Ms. Dunn

1 A Texts?

2 Q Texts.

3 A Yes.

4 Q Okay. And you used those to plan Unite the Right, right?

5 A Yes.

6 Q Okay. And you wouldn't deny, would you, that you planned
7 the Unite the Right rally using electronic media? Right?

8 A Yes.

9 Q Okay. And just to knit something else up, you just also
10 told the Court that plaintiffs and the Court should have
11 forwarded e-mails to your e-mail account.

12 Do you remember that?

13 A To the --

14 Q To deplorabletruth.

15 A Right.

16 Q That was our responsibility as plaintiffs, right?

17 A Well, I requested that because I didn't have access to
18 the other e-mail because the original e-mail was in
19 discovery.

20 Q Right. So you just told the Court -- we're all here; we
21 heard it -- that it was plaintiffs' counsel and the Court's
22 responsibility, because you had said so, to forward e-mails
23 to your e-mail account; is that correct?

24 A I asked them to change my point-of-contact e-mail
25 address.

Kline - Examination by Ms. Dunn

1 Q Right. But you admitted on Ms. Phillips'
2 cross-examination of you that you were able to access your
3 eli.f.mosley account. You remember admitting that, right?

4 A Only sparingly. I wasn't able to access it full-time.

5 Q Right, not full-time, but you accessed the account; is
6 that correct?

7 A Yes.

8 Q Yes. And you're aware that you can forward e-mails,
9 because you asked us to forward them, right?

10 A I was using that WalMart phone, which I'm not savvy on at
11 all. I was not able to -- I wasn't able to use it very long.

12 Q I thought you said you were using a family computer.

13 A Well, on two of the e-mails I used the WalMart phone, the
14 two newest ones; and before that I was using the family
15 computer.

16 Q All right. Focusing your attention, then, on the times
17 when you used the family computer, would you have been able
18 to forward e-mails?

19 A Yes. However, I got locked out of that account, the
20 eli.f.mosley account, relatively soon after I was on the
21 computer for family e-mails -- or the family computer.

22 Q Okay. But as you said, there was nothing to prevent you
23 from forwarding e-mails from the family computer, and you're
24 aware how e-mail forwarding works, correct?

25 A Yes.

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1 Q Okay. And just to knit one other thing up, you just said
2 that you were on the family computer -- I think this is what
3 you told Ms. Phillips. You were on the family computer two
4 times.

5 Those times happen to be represented by e-mails we
6 possess, right?

7 A I believe so.

8 Q Okay. And then you also told the Court that every time
9 you were on the family computer you got kicked off by Google.

10 Do you remember saying that?

11 A Yes, relatively soon after I was logged in.

12 Q Okay. So every time you were on the family computer,
13 when you say that, what you mean by "every time" is just
14 those sole two times of the e-mails we happen to have,
15 correct?

16 A Yes.

17 MS. DUNN: Thank you.

18 THE COURT: Mr. Kline, one of the things the Court
19 has to do is to see what it's going to take to put -- for you
20 to come in compliance with the Court's orders. We're not
21 starting over. The history is already here, and you don't
22 get to start over with me like you did with Judge Hoppe.

23 THE WITNESS: I understand.

24 THE COURT: I have to determine what to do today to
25 bring you into compliance, and I need -- one of the things we

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1 can do is fine a person so many dollars per day to get --
2 until they come into compliance.

3 What is your -- so because that's one of the
4 remedies we have or ways we have to get people into
5 compliance. Another is to put you in jail until you're in
6 compliance.

7 Now, what are your assets, should the Court order
8 you to come into compliance within so many days?

9 THE WITNESS: I have a car, an Explorer, and I have
10 just my furniture and things like that in my old house.
11 Like, not a lot of stuff, I would say.

12 THE COURT: So you have no money, basically?

13 THE WITNESS: Well, I have the money that I make
14 doing the odd jobs, things like that, but it's not a
15 substantial amount of income. I would say I maybe have
16 1,400, \$1,600, in the bank right now.

17 THE COURT: So it wouldn't be much of an incentive
18 to, say, fine you every day you're --

19 THE WITNESS: I believe if, like, the fine was,
20 like, \$100 a day or something similar to that, I can easily
21 pay that until I come in compliance. Like I said, I have,
22 like, 1,400, \$1,600, in the bank. If I were fined, you know,
23 tomorrow, the next day, the next day, the next day, and the
24 next day, and then I comply, I would still be able to pay
25 that.

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1 THE COURT: But you only have \$1,400? You have no
2 regular employment?

3 THE WITNESS: It's pretty easy for me to get jobs.
4 Like I said, I've been doing odd jobs on Craigslist, things
5 like that. But I have money in the bank as well.

6 THE COURT: How much money -- how much do you earn
7 when you work?

8 THE WITNESS: It depends. It's variable. I can
9 make \$800 in a week. I can make \$80 in a week. Depends on
10 what I'm doing, where I go.

11 But right now, like I said, I have, like, 1,400,
12 \$1,600, and I'm ready to comply. I have all the things that
13 they need at this point. I have all the passwords they need.
14 I'm able to and ready to answer the interrogatories that they
15 wish, and I have the WalMart phone for the eDiscovery that
16 they didn't image, as well, with all the passwords and things
17 like that. So it wouldn't take me any time. I could do it
18 right now, if I wanted to, or if you asked me to, to give
19 them that.

20 THE COURT: Well, what I'd like for you to do is to
21 deliver everything you've got today.

22 THE WITNESS: I can definitely do that.

23 THE COURT: Do it now. We'll adjourn for about -- I
24 have to be on a conference call in about 20 minutes, but --

25 THE WITNESS: If the plaintiffs provide me with the

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1 first list of interrogatories, I can fill it out right now.

2 THE COURT: No, no. Well, what I want to you do is
3 produce all this stuff that you say you have, the phones and
4 the passwords; and if they could check and see if those
5 things work.

6 THE WITNESS: Okay.

7 THE COURT: You're prepared to do that?

8 THE WITNESS: (Nods head)

9 THE COURT: How does that work for the plaintiffs?

10 MS. PHILLIPS: I mean, yes, certainly, Your Honor,
11 we would like him to come into compliance. I mean,
12 obviously, we --

13 THE COURT: I mean, right now, can you sit down
14 together and see what he's got, check out the passwords, see
15 if they work?

16 MS. PHILLIPS: So we have to get in touch with,
17 obviously, the eDiscovery vendor and see if they can plug in
18 the passwords on his e-mail account to see if that works. We
19 can try to do that.

20 THE COURT: Well, try to do that.

21 MS. PHILLIPS: Certainly we can.

22 THE COURT: I mean, I doubt that he's going to be in
23 full compliance in the next 20 or 30 minutes.

24 MS. PHILLIPS: I would agree. I think that would be
25 impossible.

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1 THE COURT: But let's see where we are.

2 THE WITNESS: Your Honor, the WalMart phone was left
3 with security downstairs. I wasn't allowed to bring a phone
4 in, so they had said that you guys --

5 THE COURT: They can get that back and bring it up.

6 THE WITNESS: Okay.

7 MS. PHILLIPS: Thank you.

8 THE COURT: All right. Okay. We'll suspend for
9 about 30 minutes. And let me know what you've resolved, if
10 anything, by that time.

11 MS. PHILLIPS: Okay.

12 THE COURT: We're in recess.

13 THE MARSHAL: All rise.

14 (Recess, 2:12 p.m. to 3:23 p.m.)

15 THE COURT: I'll ask the plaintiff to what extent
16 the request for discovery has been satisfied?

17 MS. PHILLIPS: Not at all, Your Honor. Not at all,
18 Your Honor.

19 We asked Mr. Kline to give us both of the phones
20 that he has here with him today. He has refused to give us
21 one of those.

22 We asked him to give us correct passwords for his
23 e-mail addresses. He gave us two out of three. We checked
24 one of those. It doesn't work. We asked him to change that
25 password so that we can get access that e-mail address. He

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1 hasn't done so.

2 And in the course of allowing us to review his
3 iPhone that he still maintains in his possession, we
4 discovered a fourth e-mail address that he had never
5 identified for us, and that's new information to us.

6 He also showed us a text from another individual,
7 Dillon Hopper, from October 18, which if Your Honor will
8 recall, he indicated that a message from another defendant is
9 what caused him to send the October 18 e-mail that he sent
10 from the eli.f.mosley account. It turns out that
11 communication from Mr. Hopper came in at 11:24 a.m., so
12 actually after Mr. Kline sent the October 18 e-mail, which
13 was at 1:25 a.m.

14 And in addition, Judge Hoppe held a teleconference
15 on October 18th, at which Mr. Kline's presence was required,
16 and Mr. Hopper texted Mr. Kline during the teleconference and
17 asked him whether he was going to join. And as I think Your
18 Honor is aware, Mr. Kline never did join that teleconference.

19 So we don't feel that we've made any progress.
20 Obviously, we don't have the Twitter privacy form. We don't
21 have any of the interrogatories or the RFPs. We have
22 committed to provide him an electronic version of those.

23 And my colleague has just reminded me, we also asked
24 him to change -- to delete the two-factor authentication,
25 which seems to have caused some issues for Mr. Kline, but

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1 he's refused to do that as well.

2 So that's where we are.

3 THE COURT: All right. Mr. Kline?

4 MR. KLINE: Your Honor, I'm not --

5 THE COURT: If you would, step up to the lectern.

6 MR. KLINE: Your Honor, I'm not sure what they mean
7 by we haven't made any progress.

8 There's four e-mail addresses now. The
9 deplorabletruth and eli.f.mosley and the Identity Evropa
10 e-mail address, that we all knew of beforehand, the
11 eli.f.mosley one is the one that the password that I thought
12 it was doesn't work. However, that's the one that I have to
13 be at my family's computer in order to access at all, and
14 that's because of the passwords that are saved on there.

15 The Identity Evropa e-mail address --

16 THE COURT: Your passwords are saved on there?

17 MR. KLINE: Yes. I thought they were all the same
18 password so --

19 THE COURT: I thought you said you only used that
20 computer twice.

21 MR. KLINE: Yes, I have it saved on there. That's
22 why I thought that it was the same password, on that computer
23 I've only used twice. But I've never had issues logging in.
24 It's once I get logged in, I get kicked out.

25 And the issue of the password I can easily fix as

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1 soon as I get home and send it to them. However --

2 THE COURT: The problem is you don't do anything
3 when you do go home. You leave here, you do nothing. You
4 make promises and you do not comply.

5 MR. KLINE: I understand, Your Honor.

6 And then the interrogatories, the Twitter form, and
7 the requests for production, I asked them if they could print
8 those out for me, and they said that they can, that they
9 would send them to me tonight.

10 I would rather them just print them off for me now
11 so I wouldn't have to deal with -- I wouldn't have to go home
12 and take care of that there.

13 And then as far as the two phones go, I'm okay with
14 giving them both my phones; however, then I will be without
15 any communication unless I'm in Pennsylvania, any way of
16 getting to my e-mail.

17 I do have this phone that I'm willing to turn in to
18 them today, or turn it over to discovery today. I've given
19 them the correct password for it. We tested it, and it
20 works.

21 And then if we do decide that the iPhone that is my
22 only way of communicating, we hand that in, too, I've given
23 them the password for that as well.

24 So they are able to get into everything except for
25 the eli.f.mosley account, which is something that I can get

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1 into fairly easily and give them a new password for.

2 As far as what they said with the two-factor
3 authentication, they're asking me to turn it off on the
4 eli.f.mosley account. I can't do that right now, so I --

5 THE COURT: Why can't you do it right now?

6 MR. KLINE: Because that's the account that we don't
7 know the password to right now, so I can't turn off the
8 two-factor authentication without being in the account. I
9 can't get on the account on any of my phones right now.

10 So the only thing I have left to do, if we were to
11 leave here today, would be the request for interrogatories,
12 the Twitter privacy form, and the request for production
13 form, which I would like to fill out today, but they asked to
14 e-mail me tonight.

15 And then the eli.f.mosley account, all I need for
16 that is to change the password, which I can easily do.

17 As far as the two phones go, like I said, I just
18 need to be able to --if I gave them both phones today, I
19 would have no method of, like, primary communication to give
20 to them.

21 THE COURT: Can't you use your phone that's --

22 MR. KLINE: I can when I'm at home. I can.

23 THE COURT: What?

24 MR. KLINE: I can when I'm at my parents' place.

25 But if I'm not at my parents' place, then, no, I will not be

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1 able to.

2 THE COURT: Well, you're going back today, aren't
3 you?

4 MR. KLINE: Correct, but I'm leaving back to
5 New York shortly after, so --

6 THE COURT: The more you talk, the less likely you
7 are to leave Charlottesville today.

8 MR. KLINE: I understand, Your Honor. I'm just
9 trying to explain. I'm just trying to explain to the Court
10 that I can do all these things for -- I can fulfill all these
11 things for them today and send them in today. The only one
12 that would require me to be not in Charlottesville but at
13 home is the --

14 THE COURT: Why couldn't you cooperate while we took
15 nearly an hour break, then?

16 MR. KLINE: This is the conversation we had. That's
17 why I don't understand why they said there was no
18 cooperation.

19 The only outstanding issues are the three forms that
20 I need to fill out, that they said they would e-mail to me
21 instead of printing out today. And then the e-mail address
22 for the eli.f.mosley account -- I'm sorry, the password for
23 that e-mail address, which I -- like I said, I can reset the
24 password; or when I go into my family computer, I can change
25 it and send it to them right away. That's the only -- that

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1 would be the only outstanding issue -- they can give me the
2 other forms today -- would be the password for the
3 eli.f.mosley account.

4 THE COURT: Well, turn over the phones to them now.

5 MR. KLINE: Okay.

6 THE COURT: And the passwords.

7 MR. KLINE: Okay. That's fine. I can turn over --

8 THE COURT: Do it now. Now.

9 MR. KLINE: I don't have the other phone on me.

10 THE COURT: Where is it?

11 MR. KLINE: The U.S. Marshal has it.

12 THE COURT: Okay. All right.

13 MS. PHILLIPS: Your Honor, if I may, he's
14 represented that he gave us the passcode for the iPhone.
15 That is not accurate. He told us it's a face identification
16 and he doesn't know the passcode for it.

17 MR. KLINE: No, that's not true. I told her I just
18 turned the face code off and I made it all zeroes.

19 MS. PHILLIPS: You did not tell that to me.

20 MR. KLINE: Okay. Okay. That's what we had talked
21 about in the room before you went to talk to the discovery --

22 MR. BLOCH: You said you were going to do that.

23 MR. KLINE: I did. Okay. I did that.

24 MS. PHILLIPS: So it's now -- okay.

25 MR. KLINE: I'm just turning it on right now to make

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1 sure. I'll show it to you right now.

2 MS. PHILLIPS: Your Honor, for the record, we have
3 e-mailed to both the deplorabletruth.com address and the
4 eli.f.mosley e-mail address the interrogatories, the requests
5 for production, and the privacy form; so he should have those
6 now. We were telling him that he had to wait until later for
7 us to send them to him.

8 THE COURT: What is it that he could produce right
9 now that he hasn't produced?

10 MS. PHILLIPS: We also need access -- he needs to
11 change his password for the eli.f.mosley e-mail account so
12 that we can get access to it. The one he gave us did not
13 work.

14 THE COURT: And you don't know the password?

15 MR. KLINE: No, Your Honor. But like I said, it's
16 remembered on my other computer, so I can easily go in --

17 THE COURT: Haven't you been using that site?

18 MR. KLINE: What are you --

19 THE COURT: Aren't you using that Eli Mosley?

20 MR. KLINE: The eli.f.mosley account?

21 THE COURT: Right.

22 MR. KLINE: It's not on any of my phones other than
23 the phone that they currently have for discovery. It's only
24 on that computer, and it's because the password is saved from
25 when I originally typed it in. So I can easily go to that

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1 computer and it would automatically sign in, and then I can
2 just change the password, and e-mail them from that e-mail
3 what the new password is.

4 And then this is set. I'm going to have to wait
5 until it locks so you can see if the password works.

6 So the only thing that I would need to do, then,
7 like I said earlier, Your Honor, is to give them the
8 interrogatories, the Twitter privacy form, and then the
9 requests for production, which they said they've e-mailed to
10 me so I can fill those out. I could fill those out
11 immediately if we had them here, but I can also do it when I
12 get home.

13 And then the eli.f.mosley account is the account
14 that I have on my old cellphone. That's the one I need to
15 change the password to, but I should be able to do that
16 tonight very easily.

17 THE COURT: Okay. If you'd step away, have a seat.
18 Anything else?

19 MS. PHILLIPS: May I, Your Honor?

20 THE COURT: Yes.

21 MS. PHILLIPS: I haven't had an opportunity to talk
22 about this yet, but I would like to officially ask the
23 Court -- we, obviously, mentioned this in our November 21st
24 submission to Your Honor, but we'd like to ask for
25 evidentiary sanctions as laid out in that particular

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1 submission.

2 One of the certified facts, as found by Judge Hoppe,
3 is that Mr. Kline lied under oath at his deposition.

4 He wasn't credible here on the stand today. He
5 just, you know, wasn't accurate in terms of what was
6 happening behind closed doors here at the podium. Your Honor
7 found he wasn't credible. He's still in violation, as we
8 said, of nine different court orders.

9 And our view, plaintiffs' view, is that not only
10 should Mr. Kline be held in civil contempt, but that
11 plaintiffs are entitled to evidentiary sanctions at this
12 point.

13 THE COURT: You'll get the last word.

14 MR. KLINE: Your Honor, all I would ask is that I be
15 able to fill out these forms that they've asked me to fill
16 out; and then the only outstanding issue, if I were to leave
17 here today, is the password for the eli.f.mosley account,
18 which I can very, very easily do and send that to them
19 immediately. So there's only one real issue.

20 THE COURT: You don't get to redefine what you're
21 ordered to do. There's plenty of orders; you have to comply
22 with all of them. You can't say something here today that's
23 something less and say that's enough. You've got to comply
24 with every order and every discovery request.

25 MR. KLINE: I understand.

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1 THE COURT: It's not one of these things where you
2 go away and say, Well, I thought I said so-and-so, and going
3 out of the courtroom, I said so-and-so. That's not going to
4 cut it.

5 Anything else?

6 All right. I'm going to make a statement here and
7 subject to -- we'll talk about what I say at the end, if you
8 have any objections or changes.

9 First, I intend to write a written opinion, which
10 will be this week, but I can determine now that I find
11 Mr. Kline to be presently in contempt of court.

12 Elements of civil contempt are: One, the existence
13 of a valid decree of which the alleged contemnor had actual
14 or constructive knowledge; two, the decree was in the
15 movant's favor; three, the alleged contemnor, by its conduct,
16 violated the terms of the decree and had knowledge, at least
17 constructive, of such violations; and four, that the movant
18 suffered harm as a result. I think it's self-evident what
19 the harm probably is.

20 Is there anything you would like to add that's not
21 in the record concerning the harm?

22 MS. PHILLIPS: I believe that the record is replete
23 with the harm to plaintiffs, but I'd like to spell it out for
24 Your Honor, if you don't mind.

25 THE COURT: All right.

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1 MS. PHILLIPS: I think the most instructive document
2 on this is Judge Hoppe's August 9 sanctions order granting
3 our motion, in part, where he found that we had suffered
4 severe procedural prejudice to date. And, again, that was in
5 August, and we are obviously now at the end of November, and
6 nothing has changed with regard to the defendant.

7 We have spent an enormous of time, effort, and
8 resources over the past 22 months trying to get discovery, to
9 which we are entitled.

10 We filed a motion to compel, numerous sanctions
11 motions, prepared for travel to and took the defendant's
12 deposition on discovery issues. We obviously had to prepare
13 for both the June 3rd sanctions hearing as well as this civil
14 contempt hearing.

15 In addition, the original trial date in this case
16 was set for July 8 of 2019. It has been held off
17 indefinitely.

18 The plaintiffs and the defendants have tentatively
19 reached an agreement that the trial would hopefully be
20 scheduled for October 26 of 2020, but Judge Hoppe has not yet
21 ruled on that request. So at the very least, we have been
22 delayed by at least 15 months from when our plaintiffs were
23 hoping and anticipating to get to have their day in court.

24 And, you know, in terms of the most fundamental
25 prejudice that the plaintiffs have suffered, this individual,

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1 by his own admission, was a key organizer and planner of the
2 Unite the Right. He organized and had his hand involved in
3 every aspect of the planning for this. He has critical
4 evidence, and he took the stand today to concede that he did
5 not preserve that critical evidence. So we're left with this
6 evidentiary gap, and that is obviously a prejudice to the
7 plaintiffs.

8 And I think that's it, Your Honor.

9 THE COURT: Okay. Would you like to speak to
10 whether they had harm or not?

11 MR. KLINE: No, Your Honor.

12 THE COURT: Okay. I find all of these elements are
13 met by clear and convincing evidence. Judge Hoppe's
14 certification, in my view, established a prima facie case of
15 civil contempt; but upon my own review of the record and
16 considering the arguments and facts presented here, there's
17 no question at all there's more than a clear and convincing
18 case that Mr. Kline is in contempt.

19 First, in particular, Mr. Kline has not complied
20 with even a very basic obligation of every party in a civil
21 case to respond to discovery requests. There are numerous
22 orders that are valid and of which Mr. Kline had actual
23 knowledge requiring him to respond to plaintiffs' first set
24 of interrogatories and requests for production of documents.

25 There are earlier orders but, at a minimum, Judge

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1 Hoppe's orders of July 3 and August 2 and August 8, as well
2 as this Court's order of November 14, all required Mr. Kline
3 to respond to these discovery requests. It isn't rocket
4 science. Every party -- pro se litigants and represented
5 parties alike -- have to respond to discovery requests.

6 These were orders in plaintiffs' favor and would
7 vindicate their right to receive relevant discovery from
8 Mr. Kline. He simply has not responded. And by failing to
9 respond, plaintiffs have not received discovery to which they
10 were entitled. They've had to incur attorneys' fees and
11 costs to vindicate their right to discovery, and the case is
12 stymied as a result.

13 I find Mr. Kline's assertions that he has not
14 received them to date unbelievable. That said, counsel for
15 plaintiffs will give you a copy today, and you will confirm
16 you have them today.

17 Is that possible? They can be printed off, I think,
18 easy enough.

19 MS. PHILLIPS: (Nods head).

20 THE COURT: Second, Mr. Kline has not turned over
21 all of his electronic devices and social media account
22 credentials for his accounts that were identified on his
23 certification form to the third-party discovery vendor.
24 Again, numerous valid orders establish that Mr. Kline was to
25 do so.

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1 There are earlier orders but, at a minimum, Judge
2 Hoppe's orders of July 3 and August 8 and this Court's order
3 of November 14 all required Mr. Kline to do so. These orders
4 were in plaintiffs' favor and were the first and necessary
5 step to ensure the collection and recovery all from
6 Mr. Kline.

7 Mr. Kline ignored the orders. By ignoring these
8 orders, plaintiffs have had to incur attorneys' fees and
9 costs to vindicate their right to documents relevant to their
10 claims. The Court therefore finds Mr. Kline in civil
11 contempt.

12 The Court will next address the issue of remedy,
13 which should be no more severe than necessary to coerce
14 Mr. Kline into compliance for these obligation.

15 Judge Hoppe recommended certain sanctions based on
16 his familiarity with the case and Mr. Kline's continued
17 contumacious behavior. Judge Hoppe recommended that this
18 Court grant, in part, plaintiffs' motion for sanctions and
19 impose graduated sanctions to coerce Mr. Kline's compliance
20 with his, Judge Hoppe's, order and my own discovery order. I
21 won't go into those because I'm not going to follow those
22 exactly.

23 Judge Hoppe noted that Mr. Kline, because of his
24 civil contempt, will have an opportunity to reduce or afford
25 any indefinite fines and, if necessary, imprisonment by

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1 completing each affirmative step set out in Judge Hoppe's
2 prior discovery order.

3 It's this Court's intention that beginning on
4 December 1st, that Mr. Kline pay the plaintiffs \$200 per day
5 for noncompliance. The Court would set a hearing date for
6 December 16, if that be available to the parties, for the
7 Court to hear whether he has come in compliance.

8 And at that time, I can tell you that if the Court
9 finds you're not in compliance, I'm going to have you sit in
10 jail until you come in compliance.

11 MR. KLINE: I understand, Your Honor.

12 THE COURT: All right. I intend to impose the
13 remedies -- well, the remedies that I've stated. I find that
14 imposing these graduated sanctions against Mr. Kline are
15 necessary to coerce his compliance with the Court's and Judge
16 Hoppe's discovery orders. I find that they are no harsher
17 than necessary to coerce his compliance.

18 As Judge Hoppe said, it is possible that the
19 requested evidentiary sanctions will become the only recourse
20 available to plaintiffs, and he and this Court have taken
21 those under advisement; but at present it is preferable that
22 the facts and evidence be uncovered rather than the case rely
23 on evidentiary presumptions.

24 As I said, I intend to issue a written opinion
25 but -- in the coming days concerning the sanctions, but those

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1 will start on December the 2nd. If you can bring yourself
2 into compliance before then, it will save money. And it will
3 be no later than December 2nd, 2019, at 5 p.m. Eastern
4 Standard Time.

5 You must respond in writing fully and completely to
6 plaintiffs' first set of interrogatories and requests for
7 production of documents. Plaintiffs will provide you with
8 another copy today. You will send those to plaintiffs and
9 e-mail them to the Court.

10 Two, you will provide the third-party vendor your
11 computer that you included in your certification form and
12 your WalMart phone to be imaged, i.e., copied.

13 Three, provide the third-party vendor your social
14 media credentials, including your passwords, for each and
15 every account identified on your certification form.

16 A, you will conduct a diligent search of your
17 electronic and any other records to confirm that the list of
18 social media credentials is complete and to uncover your
19 credentials for any of these accounts.

20 B, any and all accounts that you confirm you do not
21 have credentials for, you will submit a declaration, under
22 oath and under penalty of perjury, to that effect.

23 Mr. Kline, you now have the opportunity to reduce or
24 avoid the sanctions by completing those steps. If you do
25 not, I will impose the sanctions that I mentioned.

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1 Is December 16, is that a possible date?

2 MS. PHILLIPS: Yes, Your Honor.

3 THE COURT: All right. You're to be back in court
4 on December 16.

5 What time do you have? 11 o'clock, would that be
6 all right?

7 THE CLERK: That would be good, Your Honor.

8 THE COURT: All right. 11 o'clock, to determine
9 whether you've come into compliance with the order.

10 MR. KLINE: I understand, Your Honor.

11 THE COURT: Is there anything else to come before
12 the Court?

13 (Court and Clerk conferring)

14 THE COURT: Okay. My clerk says that I said
15 December 1, but the date is December 2nd.

16 That's a Monday, right?

17 THE CLERK: Right.

18 MR. KLINE: And, Your Honor, just to be clear, if I
19 am in compliance before December 2nd, I only have to pay the
20 \$200, or is it if I'm not in compliance before that that --

21 THE COURT: If you can get -- the \$200 will begin,
22 if you do not comply, on December 2nd.

23 MR. KLINE: Okay. Thank you, Your Honor.

24 THE COURT: Yes.

25 MS. PHILLIPS: Your Honor, we would request,

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1 plaintiffs would request the opportunity to brief the -- to
2 brief the evidentiary sanction issue in the event
3 Mr. Kline -- both including what we learned today, when
4 Mr. Kline was under oath, but also in case he's not in
5 compliance --

6 THE COURT: All right.

7 MS. PHILLIPS: -- by December 2nd, that we can then
8 have your ruling on that in the December 16 hearing.

9 THE COURT: All right. I would put that off
10 until -- I mean, the briefing will be due -- by what date do
11 you wish the briefing?

12 MS. PHILLIPS: Your Honor, if we could have our
13 opening brief due to you by December 6.

14 THE COURT: All right. I'm going to give Mr. Kline
15 at least until -- well, we'll take it up on December 16
16 whether -- you can answer if you need more time. I want him
17 to be working -- I don't want him working on a brief; I want
18 him to be complying with the discovery orders.

19 MS. PHILLIPS: I understand.

20 THE COURT: So I don't want to give him any -- I
21 don't want him taking up time on something else, but just
22 complete the discovery.

23 All right. With that, anything else?

24 MS. PHILLIPS: No, Your Honor.

25 MR. KLINE: No, Your Honor.

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1 THE COURT: Okay. Thank you all.

2 THE MARSHAL: All rise.

3 (Proceedings adjourned, 3:51 p.m.)

4 C E R T I F I C A T E

5 I, JoRita B. Meyer, RMR/CRR, Official Court Reporter for
6 the United States District Court for the Western District of
7 Virginia, appointed pursuant to the provisions of Title 28,
8 United States Code, Section 753, do hereby certify that the
9 foregoing is a correct transcript of the proceedings reported
10 by me using the stenotype reporting method in conjunction
11 with computer-aided transcription, and that same is a true
12 and correct transcript to the best of my ability and
13 understanding.

14 I further certify that the transcript fees and format
15 comply with those prescribed by the Court and the Judicial
16 Conference of the United States.

17 /s/ JoRita B. Meyer

Date: 11/27/2019

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